Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

No. 80-640

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

JODY JAMES and BARBARA JAMES,

Petitioners,

VS.

FORD MOTOR CREDIT COMPANY and DEL NORTE MOTOR COMPANY,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

CERTAIN RESPONDENTS' BRIEF IN OPPOSITION

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Mt. Taylor Ford, Inc., and
Richardson Ford Sales, Inc.

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SCHIFF HARDIN & WAITE

November 19, 1980

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Respondents Ford Motor Credit Company, Del Norte Motor Company, Wayne Lovelady's Frontier Ford, Inc., Capitol Motor Company, Mt. Taylor Ford, Inc. and Richardson Ford Sales, Inc. (the "Ford Respondents"), through their counsel, respectfully request the Court to defer consideration of the Petition for a Writ of Certiorari filed in this cause until the Court has decided another case pending before it, *Anderson Bros. Ford and Ford Motor Credit Company* v. *Olga Valencia and Miguel Gonzalez,* No. 80-84, *cert. granted* Nov. 10, 1980 (*"Valencia"*).

ARGUMENT

I. The First Question Presented by the Petition is Identical to the Question Which the Court Will Decide in *Valencia.*

The first question presented by the Petition in this cause is whether an assignment of returned or unearned premiums

of physical damage insurance must be disclosed as a security interest under the Truth in Lending Act. The Court on November 10, 1980 granted certiorari with respect to precisely the same question presented in the Petition for a Writ of Certiorari in *Valencia*. For the reasons set forth in the *Valencia* Petition, the Ford Respondents contend that the decision below by the Court of Appeals for the Tenth Circuit was correctly decided.

In any event, as the Petitioners herein expressly recognize, *Valencia* raises the identical issue "in regard to the same Ford Motor Credit Company contract form as is presented below." (Petition at 8, n.3). The Court may, on the motion of a party or on the Court's own motion, defer consideration of a petition for certiorari until a decision is reached by the Court in a pending case raising similar issues. *See Murray* v. *City of New York*, 308 U.S. 528, 310 U.S. 610, 311 U.S. 720 (1940). The Ford Respondents respectfully submit that this is a proper case for such deferral since resolution of the question presented in *Valencia* will dispose of the identical question presented herein.

II. The Second Question Presented by the Petition Provides No Reason for Granting Certiorari and May Become Moot.

The second question presented by the Petition herein relates to the dismissal with prejudice by the court below of complaints alleging other Truth in Lending violations. Since this question is limited to the unique pleadings of this particular case, it does not qualify for review by the Court. Petitioners do not claim that the decision below on this question is in conflict with the decision of another federal court of appeals on the same matter, or with the decision of a state court of last resort. Nor is this question of such independent importance as to require review by the Court.

In any event, the second question may become moot. Petitioners concede that "a consumer is entitled to only a single statutory recovery whether there is a single violation or multiple violations of the [Truth in Lending] Act." (Petition at 21). Accordingly, once the Court has decided the question presented in *Valencia,* the second question raised by the Petition herein may become moot.

CONCLUSION

The Ford Respondents respectfully request the Court to defer consideration of the Petition herein until the Court has decided *Valencia.*

Respectfully submitted,

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